

LHO NEW ORLEANS LM, L.P.,  
Plaintiff,  
  
v.  
  
MHI LEASCO NEW ORLEANS, INC., and  
MERIDIEN HOTELS, INC.,  
Defendants.

Submitted: April 10, 2006  
Decided: April 11, 2006

This 11<sup>th</sup> day of April 2006, the defendants' motion for summary judgment, the plaintiff's response, and oral argument having been considered, it appears that:

2. The agreement which gives rise to the rights and responsibilities of the parties at issue in this action is the Lease Agreement of February 19, 1998, by and between LaSalle Hotel

Operating Partnership, L.P. as Landlord, and MHI Leasco New Orleans, Inc. as Tenant (the “agreement”). Paragraph 22.21 of the agreement provides:

22.21 Governing Law. Submission to Jurisdiction. This Agreement is or will be made and delivered in the State and shall be governed by and construed and interpreted in accordance with the laws of the United States of America and the State, without regard to principles of conflict of laws. All judicial actions, suits or proceedings brought by or against Tenant with respect to its rights, obligations, liabilities or any other matter under or arising out of or in connection with this Agreement or any transaction contemplated hereby or for recognition or enforcement of any judgment rendered in any such proceedings shall be brought by Tenant and Landlord in any state or federal court in the State. By execution and delivery of this Agreement, Tenant and Landlord each accepts, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any final judgment rendered thereby in connection with this Agreement or any transaction contemplated hereby from which no appeal has been taken or is available. Tenant and Landlord each hereby irrevocably waives any objections, including without limitation any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Tenant and Landlord each acknowledges that final judgment against it in any action suit or proceeding referred to in this Section shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the same.<sup>1</sup>

3. The contract defines the “State” as “the state or district in which the Leased Property is located.”<sup>2</sup> The location of the leased property is defined by Exhibit E<sup>3</sup>, which describes the property by metes and bounds as located in the City of New Orleans. These facts are not disputed.

4. Considerable litigation related to the dissolution of the relationship of the parties has occurred in Louisiana.<sup>4</sup> While that litigation was underway, the record reveals that LaSalle

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<sup>1</sup> Lane Aff., Ex. A at 88-89, *Lasalle Hotel Operating Partnership, L.P. and MHI Leasco New Orleans, Inc.*, Lease Agreement, Art. 22, ¶ 22.21 (Feb. 19, 1998).

<sup>2</sup> *Id.* at 20, *Lasalle*, Lease Agreement, Art. 1, ¶ 1.136.

<sup>3</sup> Lane Aff., Ex. A at Ex. E, Parcel I.

<sup>4</sup> Lane Aff., Ex. J, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 02-515, Division J, Civil District Court for the Parish of Orleans, Louisiana; Lane Aff., Ex. L, *LHO New Orleans LM, L.P., v. MHI Leasco New Orleans, Inc.*,

identified the defaults at issue here in January 2003 in a letter to Meridian<sup>5</sup>; that the trial date of November 2004 was set in May, 2004<sup>6</sup>; and that the motion to amend the petition to formally assert the default claims offered here was filed in October, 2004<sup>7</sup>. About the same time, LaSalle filed a motion for summary judgment on the default claims, and a motion to conform the pleadings to the proof. All the motions were denied by order dated November 30, 2004.<sup>8</sup> The trial was delayed to February, 2005.

5. The defendants contend that Louisiana is the contractually required venue for this claim, pursuant to paragraph 22.21, and note that in papers previously filed in Louisiana, plaintiff has recognized 22.21 as a “broad submission to the jurisdiction of Louisiana courts.”<sup>9</sup>

6. The plaintiff responds that the paragraph does not limit the choice of forums to Louisiana; that it confers nonexclusive jurisdiction on Louisiana. It supports its argument with reference to the sentence: “[b]y execution and delivery of this Agreement, Tenant and Landlord each accepts, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any final judgment. . . .”<sup>10</sup> Plaintiff also references paragraph 22.13, Applicable Law, Etc. to support its contention. That paragraph provides:

22.13 Applicable Law, Etc. This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the State applicable to contracts between residents of the State which are to be performed

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02-0663 (La.App. 4 Cir. 11/20/02), 833 So.2d 1010; Lane Aff., Ex. W, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 2002-515 & 534, Division J, Civil District Court for the Parish of Orleans, Louisiana; Lane Aff., Ex. Z, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 2004-C-2099 (La. App. 4 Cir. 12/10/04); Lane Aff., Ex. X, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 2002-515 & 534, Division J, Civil District Court for the Parish of Orleans, Louisiana; Lane Aff., Ex. Y, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 2002-215, Division J, Civil District Court for the Parish of Orleans, Louisiana.

<sup>5</sup> Lane Aff., Ex. R, Letter from William M. Bosch, Esq. to Thomas P. Lane, Esq. (Jan. 20, 2003).

<sup>6</sup> Lane Aff., Ex. S, Notice of Trial (May 24, 2004)

<sup>7</sup> Lane Aff., Ex. T, Pl.’s Mot. to Am. Pet. (Oct. 12, 2004)

<sup>8</sup> Lane Aff., Ex. W, *LHO New Orleans v. MHI Leasco New Orleans, Inc.*, 2002-515 & 534, Division J, Civil District Court for the Parish of Orleans, Louisiana.

<sup>9</sup> Lane Aff., Ex. I, *Pl.’s Mot. to Stay Arb.*, at 2 (Jan. 15, 2002).

<sup>10</sup> Lane Aff., Ex. A at 88-89, *Lasalle*, Lease Agreement, Art. 22, ¶ 22.21.

entirely within the State, regardless of: (a) where this Agreement is executed or delivered; (b) where any payment or other performance required by this Agreement is made or required to be made; (c) where any breach of any provision of this Agreement occurs, or any cause of action otherwise accrues; (d) where any action or other proceeding is instituted or pending; (e) the nationality, citizenship, domicile, principle place of business, or jurisdiction of organization or domestication of any party; (f) whether the laws of the forum jurisdiction otherwise would apply the law of a jurisdiction other than the State; or (g) any combination of the foregoing.<sup>11</sup>

7. The defendants filed a motion to dismiss. Both defendants and plaintiffs have offered affidavits, depositions and other supportive documentation outside the pleadings. Because these documents were considered by the Court in its decision, the motion must be treated as one for summary judgment.<sup>12</sup> A motion for summary judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>13</sup> In determining whether there is a genuine issue of material fact, the evidence must be viewed in the light most favorable to the non-moving party.<sup>14</sup>

8. This court will enforce contractually agreed upon forum selection provisions so long as they are the product of a “freely negotiated” agreement and are not “unreasonable and unjust.”<sup>15</sup>

9. “The objective of interpretation in the general law of contracts is to carry out the understanding of the parties. . . .”<sup>16</sup> The primary rule of contract construction, known as the clear meaning rule, applies when the parties have created an unambiguous, integrated written

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<sup>11</sup> *Id.* at 84, *Lasalle*, Lease Agreement, Art. 22, ¶ 22.13.

<sup>12</sup> *Shultz v. Delaware Trust Co.*, 360 A.2d 576 (Del. Super. 1976). *See* Super. Ct. Civ. R. 12(b)(6).

<sup>13</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96 (Del. 1992).

<sup>14</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>15</sup> *Hornberger Management Co. v. Haws & Tingle General Contractors, Inc.*, 768A.2d 983, 987 (Del. Super. 2000) (citing *Burger King Corp. v. Rudewicz*, 471 U.S. 462, 472 )0; *See also Del Pharmaceuticals, Inc. v. Access Pharmaceuticals, Inc.*, 2004 WL 1631355 \*3 (Del. Ch.).

<sup>16</sup> *See* Restatement (Second) of Contracts § 201 (1981).

statement of their contract.<sup>17</sup> If there is no ambiguity, the contract will be interpreted according to the ordinary and usual meaning of its terms.<sup>18</sup>

10. The language of Article 22, Paragraph 22.21 of the Lease Agreement is not ambiguous. It clearly provides that all judicial actions regarding the Agreement or any related transaction are to be brought in either a state or a federal court in Louisiana. The language regarding “nonexclusive jurisdiction of the aforesaid courts” simply means that either option is available. The later language that a final judgment “may be enforced in any other jurisdiction” recognizes the fact that enforcement of a final judgment may require the initiation of proceedings outside of Louisiana where assets are located.

11. Nor is plaintiff’s reliance on paragraph 22.13<sup>19</sup> of moment. That provision requires that Louisiana law be applied to the agreement, regardless of factors which might otherwise influence a choice of law analysis. It does not address choice of forum, directly or indirectly.

12. Because I find the choice of law provision to be controlling, I do not reach the other arguments in support of the motion to dismiss.

Wherefore, the defendants’ Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

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Judge Susan C. Del Pesco

xc: Prothonotary  
Thomas Lane, Esquire  
Jeffrey S. Goddess, Esquire  
William M. Bosch, Esquire  
James E. Drnec, Esquire

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<sup>17</sup> *City Investing Co. v. Continental Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993)

<sup>18</sup> *Twin City Fire Ins. Co. v. Delaware Racing Ass’n*, 2003 WL 23104198 (Del. 2003)

<sup>19</sup> Lane Aff., Ex. A at 84, *Lasalle*, Lease Agreement, Art. 22, ¶ 22.13.